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Attorney for Defendant
TIG INSURANCE COMPANY
ERRONEOUSLY SUED HEREIN AS
TIG SPECIALTY INSURANCE COMPANY

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AIU INSURANCE COMPANY, a New
York corporation,

Plaintiff,

vs.

ACCEPTANCE INSURANCE
COMPANY, a Delaware corporation, TIG
SPECIALTY INSURANCE COMPANY,
a California corporation, ROYAL
INSURANCE COMPANY OF
AMERICA, a Delaware corporation,
AMERICAN SAFETY RISK
RETENTION GROUP, IND., a Vermont
corporation, and DOES 1 through 10,
inclusive,

Defendants.

No. C 07-05491 EDL

**ANSWER OF DEFENDANT TIG
INSURANCE COMPANY,
ERRONEOUSLY SUED HEREIN AS
TIG SPECIALTY INSURANCE
COMPANY**

**COMPLAINT FILED:
OCTOBER 29, 2007**

Defendant TIG Insurance Company, erroneously sued herein as TIG Specialty Insurance Company, ("TIG") answers the allegation contained in the Complaint brought by Plaintiff AIU Insurance Company ("Plaintiff" or "AIU") as follows:

1. Answering the allegations contained in Paragraph 1 of Plaintiff's Complaint, TIG is without sufficient knowledge or information to form a belief as to

1 the truth of the allegations contained in said paragraph, and on that basis denies each
2 and every allegation contained therein.

3 2. Answering the allegations contained in Paragraph 2 of Plaintiff's
4 Complaint, TIG admits that some of the underlying lawsuit is alleged to have occurred
5 in the County of San Mateo. Except as expressly admitted herein, the remainder of
6 Paragraph 2 does not call for an admission or a denial.

7 3. Answering the allegations contained in Paragraph 3 of Plaintiff's
8 Complaint, TIG is without sufficient knowledge or information to form a belief as to
9 the truth of the allegations contained in said paragraph, and on that basis denies each
10 and every remaining allegation contained therein.

11 4. Answering the allegations contained in Paragraph 4 of Plaintiff's
12 Complaint, TIG is without sufficient knowledge or information to form a belief as to
13 the truth of the allegations contained in said paragraph, and on that basis denies each
14 and every remaining allegation contained therein.

15 5. Answering the allegations contained in Paragraph 5 of Plaintiff's
16 Complaint, TIG is without sufficient knowledge or information to form a belief as to
17 the truth of the allegations contained in said paragraph, and on that basis denies each
18 and every remaining allegation contained therein.

19 6. Answering the allegations contained in Paragraph 6 of Plaintiff's
20 Complaint, TIG admits that it is a California Corporation, authorized to do, and doing
21 business in California. Contrary to the allegations of Complaint, TIG's principal place
22 of business is Manchester, New Hampshire. TIG also admits that it is engaged in the
23 business of insurance and is admitted in the State of California to transact the business
24 of insurance. Except as expressly admitted herein, TIG denies the remaining
25 allegations of this paragraph.

26 7. Answering the allegations contained in Paragraph 7 of Plaintiff's
27 Complaint, TIG is without sufficient knowledge or information to form a belief as to
28

1 the truth of the allegations contained in said paragraph, and on that basis denies each
2 and every remaining allegation contained therein.

3 8. Answering the allegations contained in Paragraph 8 of Plaintiff's
4 Complaint, TIG is without knowledge or information sufficient to form a belief as to
5 the truth of those allegations and thus denies the same.

6 9. Answering the allegations contained in Paragraph 9 of Plaintiff's
7 Complaint, TIG is without knowledge or information sufficient to form a belief as to
8 the truth of those allegations and thus denies the same.

9 10. Answering the allegations contained in Paragraph 10 of Plaintiff's
10 Complaint, TIG is without knowledge or information sufficient to form a belief as to
11 the truth of those allegations and thus denies the same.

12 11. Answering the allegations contained in Paragraph 11 of Plaintiff's
13 Complaint, TIG is without knowledge or information sufficient to form a belief as to
14 the truth of those allegations and thus denies the same.

15 12. Answering the allegations contained in Paragraph 12 of Plaintiff's
16 Complaint, TIG alleges affirmatively that the terms and conditions of AIU's policies
17 attached as Exhibits A and B speak for themselves. TIG otherwise denied any and all
18 remaining allegations contained in paragraph 12 of Plaintiff's Complaint.

19 13. Answering the allegations contained in Paragraph 13 of Plaintiff's
20 Complaint, TIG admits that the Acceptance Primary Policies are attached as exhibits to
21 the Complaint. However, TIG is without sufficient knowledge or information to form
22 a belief as to the truth of the allegations contained in said paragraph, and on that basis
23 denies each and every allegation contained therein.

24 14. Answering the allegations contained in Paragraph 14 of Plaintiff's
25 Complaint, TIG admits that it issued policy No. 31352800 effective March 1, 1995 to
26 March 1, 1996 to Rylock. The TIG policy provides \$1M per occurrence subject to a
27 \$2M in the aggregate for products/completed operations.

1 15. Answering the allegations contained in Paragraph 15 of Plaintiff's
2 Complaint, TIG is without sufficient knowledge or information to form a belief as to
3 the truth of the allegations contained in said paragraph, and on that basis denies each
4 and every allegation contained therein.

5 16. Answering the allegations contained in Paragraph 16 of Plaintiff's
6 Complaint, TIG is without sufficient knowledge or information to form a belief as to
7 the truth of the allegations contained in said paragraph, and on that basis denies each
8 and every allegation contained therein.

9 17. Answering the allegations contained in Paragraph 17 of Plaintiff's
10 Complaint, TIG is without sufficient knowledge or information to form a belief as to
11 the truth of the allegations contained in said paragraph, and on that basis denies each
12 and every allegation contained therein.

13 18. Answering the allegations contained in Paragraph 18 of Plaintiff's
14 Complaint, TIG is without sufficient knowledge or information to form a belief as to
15 the truth of the allegations contained in said paragraph, and on that basis denies each
16 and every allegation contained therein.

17 19. Answering the allegations contained in Paragraph 19 of Plaintiff's
18 Complaint, TIG admits Rylock was engaged in the business of window manufacturing.
19 TIG also admits that Rylock windows were installed in numerous homes in California.
20 TIG also admits that Rylock has been named as a defendant and/or cross-defendant in
21 litigation in which homeowners have alleged that Rylock's windows were defective
22 and that such defects led to water intrusion resulting in property damage. Except as
23 expressly admitted herein, TIG is without knowledge or information sufficient to form
24 a belief as to the truth of those allegations and thus denies the same.

25 20. Answering the allegations contained in Paragraph 20 of Plaintiff's
26 Complaint, TIG admits that Rylock has tendered the defense and indemnity of certain
27 matters to TIG. Except as expressly admitted herein, TIG is without sufficient
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1 knowledge or information to form a belief as to the truth of the allegations contained in
2 said paragraph, and on that basis denies each and every allegation contained therein.

3 21. Answering the allegations contained in Paragraph 21 of Plaintiff's
4 Complaint, TIG is without sufficient knowledge or information to form a belief as to
5 the truth of the allegations contained in said paragraph, and on that basis denies each
6 and every allegation contained therein.

7 22. Answering the allegations contained in Paragraph 22 of Plaintiff's
8 Complaint, TIG admits that Rylock has designated the Royal policies to respond to at
9 least some of the claims in certain matters. Except as expressly admitted herein, TIG is
10 without sufficient knowledge or information to form a belief as to the truth of the
11 allegations contained in said paragraph, and on that basis denies each and every
12 allegation contained therein.

13 23. Answering the allegations contained in Paragraph 23 of Plaintiff's
14 Complaint, TIG is without sufficient knowledge or information to form a belief as to
15 the truth of the allegations contained in said paragraph, and on that basis denies each
16 and every allegation contained therein.

17 24. Answering the allegations contained in Paragraph 24 of Plaintiff's
18 Complaint, TIG is without sufficient knowledge or information to form a belief as to
19 the truth of the allegations contained in said paragraph, and on that basis denies each
20 and every allegation contained therein.

21 25. Answering the allegations contained in Paragraph 25 of Plaintiff's
22 Complaint, TIG incorporates by reference its answers to Paragraphs 1 through 24 as
23 though fully set forth herein.

24 26. Answering the allegations contained in Paragraph 26 of Plaintiff's
25 Complaint, TIG is without knowledge or information sufficient to form a belief as to
26 the truth of the allegations contained therein and thus denies the same.

27 27. The allegations contained in Paragraph 27 of Plaintiff's Complaint do not
28 call for an admission or a denial from TIG.

1 28. Answering the allegations contained in Paragraph 28 of Plaintiff's
2 Complaint, TIG is without sufficient knowledge or information to form a belief as to
3 the truth of the allegations contained in said paragraph, and on that basis denies each
4 and every allegation contained therein.

5 29. Answering the allegations contained in Paragraph 29 of Plaintiff's
6 Complaint, TIG incorporates by reference its answers to Paragraphs 1 through 28 as
7 though fully set forth herein.

8 30. Answering the allegations contained in Paragraph 30 of Plaintiff's
9 Complaint, TIG admits that an actual controversy exists between AIU and TIG relating
10 to their respective legal rights and duties under their respective policies. Except as
11 expressly admitted herein, TIG is without sufficient knowledge or information to form
12 a belief as to the truth of the allegations contained in said paragraph, and on that basis
13 denies each and every allegation contained therein.

14 31. The allegations contained in Paragraph 31 of Plaintiff's Complaint do not
15 call for an admission or a denial from TIG.

16 32. Answering the allegations contained in Paragraph 32 of Plaintiff's
17 Complaint, TIG admits that there is an actual controversy between it and AIU. Except
18 as expressly admitted herein, TIG is without sufficient knowledge or information to
19 form a belief as to the truth of the allegations contained in said paragraph, and on that
20 basis denies each and every allegation contained therein.

21 22 23 **AFFIRMATIVE DEFENSES**

24 TIG asserts the following affirmative defenses to Plaintiff's Complaint.

25 26 **First Affirmative Defense**

27 This matter is subject to dismissal based on abstention principles in that this
28 Court has the power to refrain from hearing cases based on "scrupulous regard for the

1 rightful independence of the state governments' and for the smooth working of the
2 federal judiciary" [*Quackenbush v. Allstate Ins. Co.* (1996) 517 U.S. 706, 718, quoting
3 *Railroad Comm'n of Tex. v. Pullman Co.* (1941) 312 U.S. 496, 500-501] because the
4 only relief sought is for equitable or discretionary relief.

5 **Second Affirmative Defense**

6 Plaintiffs' Complaint fails to state a claim against TIG upon which relief can be
7 granted.

8 **Third Affirmative Defense**

9 To the extent that AIU may have failed to mitigate, minimize or avoid any
10 damages it allegedly sustained, any recovery against TIG must be reduced by that
11 amount.

12 **Fourth Affirmative Defense**

13 As a separate and affirmative defense to the Complaint and without admitting
14 that the terms, conditions and exclusions of an insurance policy must be pled in an
15 affirmative defense, TIG alleges that coverage for the claims that are the subject of this
16 action is precluded, in whole or in part, by reason of the terms, conditions, provisions,
17 limitations, endorsements and exclusions of the TIG policy.

18 **Fifth Affirmative Defense**

19 TIG alleges that its obligations in connection with the underlying action, if any,
20 must be apportioned among all of the responsible insurers including, without
21 limitation, Plaintiffs.

22 **Sixth Affirmative Defense**

23 As a separate affirmative defense, TIG alleges that Plaintiffs' damages, if any,
24 were caused by or contributed to by the acts, errors and omissions of Plaintiff and/or
25 other individuals or entities, and that Plaintiff's recovery against TIG, if any, must be
26 reduced accordingly.

27 **Seventh Affirmative Defense**

28 Without admitting that the subject matter of this paragraph must be pled as an

1 affirmative defense, TIG alleges that the Plaintiff may not recover from TIG any
2 amounts for which payments have been made to or are collected by Plaintiff from third
3 parties to this litigation, and Plaintiff's recovery, if any, against TIG must be reduced
4 by the payments that have been made by such third parties.

5 **Eighth Affirmative Defense**

6 Plaintiff's claim against TIG is barred by the applicable statutes of limitations.

7 **Ninth Affirmative Defense**

8 TIG alleges that it may have additional defenses that cannot now be articulated
9 and, therefore, TIG reserves its right to amend the Answer.

10
11 **WHEREFORE** TIG requests a judgment as follows:

- 12 1. That plaintiff take nothing by reason of its Complaint;
13 2. A declaration that Defendant TIG has no obligation to AIU for any
14 amount claimed in Plaintiff's Complaint;
15 3. That defendant TIG be awarded costs of suit incurred herein; and
16 4. For such other and further relief as the Court deems appropriate.

17
18 DATED: December 6, 2007

LAW OFFICES OF SEMHA ALWAYA

19 By: 
20 Semha Alwaya

21 Attorney for Defendant TIG INSURANCE
22 COMPANY ERRONEOUSLY SUED
23 HEREIN AS TIG SPECIALTY
24 INSURANCE COMPANY
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REQUEST FOR JURY TRIAL

TIG hereby requests trial by jury.

LAW OFFICES OF SEMHA ALWAYA

By: Semha Alwaya
Semha Alwaya

Attorney for Defendant TIG INSURANCE
COMPANY ERRONEOUSLY SUED
HEREIN AS TIG SPECIALTY INSURANCE
COMPANY